IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 104.

STATE OF NEW JERSEY AND BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY,

Appellants,

vs.

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

APPELLANTS' BRIEF ON THE MERITS.

ARTHUR J. SILLS,
Attorney General of New Jersey,
Attorney for Appellants, State of New Jersey and Board of Public Utility Commissioners,
State House Annex,
Trenton 25, New Jersey.

Of Counsel,
WILLIAM GURAL,
Deputy Attorney General,
101 Commerce Street,
Newark 2, New Jersey.

Arthur W. Croak, Inc., Law Printers, 71-73 Clinton Street, Newark 5, N. J.—MArket 3-4994

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Opinions Below.

First, the initial Interstate Commerce Commission ("I. C. C.") order, dated January 18, 1961, dismissed for lack of jurisdiction New York, Susquehanna and Western Railroad Company's (hereafter referred to as "Appellee") notice of train discontinuance filed with the I. C. C. on December 30, 1960. The order is part of the printed record (R. 7).

Secondly, the I. C. C. order dated May 10, 1961 (R. 8), denied Appellee's motion for reconsideration of the I. C. C. order of January 18, 1961.

Lastly, the opinion of the court below (R. 13) is reported in 200 F. Supp. 860 (D. C. N. J. 1961), entitled *New York, Susquehanna & Western R. Co.* v. *United States.*

Basis of Jurisdiction.

The three-judge district court, one judge dissenting, entered a final judgment (R. 26) dated January 9, 1962, entered on the docket January 11, 1962, setting aside the I. C. C. order of January 18, 1961. The I. C. C. order held that the Appellee improperly filed train discontinuance notices under Section 13a(1) of the Interstate Commerce Act because the trains operated solely within the State of New Jersey. A direct appeal to this Honorable Court from the decision of the three-judge district court is authorized by 28 U. S. C., Section 1253, and the procedure, with which Appellants* have complied, is set forth in 28 U. S. C., Section 2101(b) and Revised Rules 10 and 11(3). On June 25, 1962, this court entered its order (R. 100) noting probable jurisdiction.

Constitutional Provisions and Statute Involved.

In enumerating the Congressional powers, Article 1, Section 8, Clause 3, of the United States Constitution states that Congress shall have power, "To regulate Commerce

* State of New Jersey and Board of Public Utility Commissioners of the State of New Jersey, hereinafter referred to as "Appellants."

with foreign Nations, and among the several States, and with the Indian Tribes; * * *" The Tenth Amendment to the United States Constitution provides, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The statute involved is Section 13a of the Interstate Commerce Act; 72 Stat. 571, 49 U. S. C., Section 13a.

Questions Presented.

1. Whether the Appellee's application, for relief under Section 13a(1), rather than under Section 13a(2), was correctly dismissed by the I. C. C. as beyond its jurisdiction.

2. Whether the I. C. C. was correct in deciding that the phraseology of Section 13a(1), "* * * any train or ferry operating from a point in one State to a point in any other State," does not apply to a train otherwise wholly intrastate, merely because interstate autobus service was available at one terminus.

Statement of the Case.

The Appellee operates passenger train service in New Jersey consisting of three eastbound trains and three westbound trains between Butler, New Jersey and Susquehanna Transfer in North Bergen, New Jersey (R. 45), operating daily except Saturday, Sunday and holidays, and one westbound passenger train operating on certain holidays. A connecting bus operates between Susquehanna Transfer in

North Bergen, New Jersey and the Port Authority Terminal in New York City. The trains stop at intermediate New Jersey points which are set forth in Appellee's "notice of proposed discontinuance of service." (R. 74).

On the 29th and 30th of December, 1960, Appellee posted notices (R. 74) dated December 29, 1960, stating that its passenger train service would be discontinued January 30, 1961. On January 9, 1961, the Appellants filed a petition (R. 75) with the I. C. C. asking that the Commission enter upon an investigation of the Appellee's notice and further prayed for a dismissal without prejudice on the ground that the train service was wholly intrastate, and therefore not within I. C. C. jurisdiction. Although passengers may travel between Butler, New Jersey, and New York City, New York, they cannot do so in one continuous trip. The *trains* and the *tracks* on which they run extend from Butler to Susquehanna Transfer in North Bergen, entirely within New Jersey. From Susquehanna Transfer, passengers may be transported to the Port Authority Bus Terminal in New York City by a bus on a public highway. Upholding the Appellants' position, the I. C. C., by its order (R. 7) dated January 18, 1961, dismissed the notice filed by the Appellee because Section 13a(1) did not apply to the facts of this case.

Thereafter, the Appellee, on February 20, 1961, filed with the I. C. C. a petition for reconsideration (R. 86) of the order entered January 18, 1961. By its order (R. 8) of May 10, 1961, the I. C. C. denied Appellee's petition for reconsideration. The Appellee brought suit (R. 1), on May 18, 1961, in the United States District Court for the State of New Jersey challenging the I. C. C. orders of January 18 and May 10, 1961. The I. C. C. order of January 18,

1961 was set aside by a majority of a three-judge district court with one judge dissenting. Final judgment (R. 26) dated January 9, 1962 was entered on the docket on January 11, 1962.

The Appellants filed a notice of appeal (R. 28) on March 6, 1962, pursuant to 28 U. S. C. Sections 1253, 2101(b) and Revised Rules 10(1), 11(3) of this Court. A cross-appeal by Appellee was served on the Appellants on March 7, 1962. The cross-appeal was taken from so much of the final judgment as restrained the Appellee from discontinuing passenger service pending appeal by the Appellants to this Court. Subsequently, Appellants filed their statement as to jurisdiction, receipt of which was acknowledged by the Clerk of this Court on May 4, 1962, and Appellants otherwise complied with Revised Rules 13 and 15 with respect to the docketing of the case, filing of the record, entering of counsel's appearance, and payment of the docket fee. The time for Appellee to docket its cross-appeal was enlarged by the May 7, 1962, order of District Court Judge Wortendyke, one of the judges of the court below, to such time as this court shall have acted on Appellants' statement as to jurisdiction. While this court noted probable jurisdiction on June 25, 1962, Appellee has not yet docketed its cross-appeal as required by Revised Rule 13.

Appellee, on May 23, 1962, and pursuant to Revised Rule 16(1), served on the Appellants a motion to affirm the judgment of the court below which was mailed to the Clerk of this Court on May 22, 1962. In answer pursuant to Revised Rule 16(3), the Appellants, on June 8, 1962, mailed their brief in opposition to Appellee's motion to affirm, which brief was filed by the Clerk of this Court on June 11,

1962. Thereafter, this Court, pursuant to its Revised Rule 16(4), on June 25, 1962, entered an order noting probable jurisdiction in this matter. By letter dated July 16, 1962, the Clerk of this Court acknowledged receipt of Appellants' designation of portions of the record to be printed, mailed by Appellants on July 12, 1962, within the time required by Revised Rule 17. Likewise, the Appellee thereafter cross-designated portions of the record to be printed.

Thereafter, the Court below on September 4, 1962, on application by the Appellee, issued an order to show cause directed to the Appellants and others to show why the stay in the judgment appealed from should not be vacated or continued with modification. On the return date of such order, September 27, 1962, the three-judge district court discharged the order on the ground that it had no jurisdiction because the judgment was on appeal to this Court.

The Appellants received copies of the printed transcript of record from the Clerk of this Court on September 17, 1962.

Summary of Argument.

A. The history of the Interstate Commerce Act (I. C. C. Act) reveals that Congress had not intended to encroach upon a State's right to regulate intrastate trains. Under the I. C. C. Act from 1887 to 1958, the I. C. C. had no authority over the discontinuance of a train running from a point in one state to a point in another state. The Transportation Act of 1958 was designed in part to grant to the I. C. C. the statutory authority which it lacked over discontinuance of trains. Subdivision 13a(1) of the Act concerns I. C. C. jurisdiction over the discontinuance of an

interstate train or ferry. Conversely, in subdivision 13a(2) state jurisdiction is recognized over an intrastate train and ferry. In this manner, Congress preserved existing state authority. *Palmer* v. *Massachusetts*, 308 U. S. 79 (1939). It is clear from the history of the legislation that a bus was not intended to be included in Section 13a of the 1958 Transportation Act. Rather, the units of transport unambiguously designated in the law were a train and a ferry. To say that intrastate trains connecting with an interstate bus are within the I. C. C. jurisdiction under subdivision 13a(1) would be contrary to the legislative history and beyond the plain words of the statute. The interpretation of the Court below nullifies the effect of subdivision 13a(2), which continued state authority over intrastate trains.

B. The Congressional debates prior to enactment of Section 13a and its deliberations on the pending bill clearly show that the respective states are to retain jurisdiction over intrastate trains. 104 *Cong. Rec.* 12530 (1958). Upholding the judgment of the Court below would frustrate the Congressional intent.

The interpretation of Section 13a by the administrative agency designated to enforce it, here the I. C. C., is entitled to weight in construing that law. *Boston & M. R. Co.* v. *Hooker*, 233 U. S. 97 (1914); *New York Central Securities Corporation* v. *United States*, 287 U. S. 12 (1932). The Court below erred when it set aside the I. C. C. order.

C. Not only are the terms "train or ferry" set forth in the statute clear from the four corners of the law but also from judicial definition. *United States* v. *Erie R. Co.*, 237 U. S. 402 (1915). Briefly, a train is an engine and cars

assembled to run along the road, thus precluding a connecting bus. This definition is further supported by the Congressional Record where the legislators exclude stations, depots or other facilities from the pending bill and finally agree upon the words "train or ferry." 104 *Cong. Rec.* 12533 (1958); 1958 *U. S. Code Congressional and Administrative News*, p. 3482 at pp. 3486, 7 (Conference Report of the Senate-House Conference Committee). The sole element that must be considered in determining whether the I. C. C. or a state administrative agency has jurisdiction under Section 13a is the train or ferry trip. Does the train operate from a point in one state to a point in another state or does the train operate wholly within one state? That should be the only test. Considering this to be the clear Congressional intent, the intrastate trains here involved are within the jurisdiction of the New Jersey Board of Public Utility Commissioners. This railroad's relief, if it be entitled to any, should flow from subdivision 13a(2), which deals with trains or ferries operated wholly within the boundaries of a single state, and not from 13a(1) which deals with trains or ferries operated from a point in one state to a point in any other state.

ARGUMENT.

POINT I.

The reason for the enactment of 49 U. S. C. Section 13a was to grant to the I. C. C. jurisdiction over discontinuance of trains or ferries in or a burden on interstate commerce.

While the Interstate Commerce Act was enacted in 1887, 42 Stat. 384, it was not until 1920 that Congress un-

dertook to delegate to the I. C. C. jurisdiction over the abandonment of railroad lines. *Transportation Act of February 28, 1920*, 41 Stat. 477, 49 U. S. C. Section 1(18). That law bestowed upon the I. C. C. large powers which formerly had been exercised by the several states; however, the jurisdiction was limited to abandonment of a line of railroad as distinguished from a partial discontinuance of service. *Palmer* v. *Massachusetts*, 308 U. S. 79 (1939).

The enactment of the Transportation Act of 1958, 72 Stat. 568, which included 49 U. S. C. Section 13a, was an extension of I. C. C. jurisdiction because up to that time 49 U. S. C. Section 1(18), 54 Stat. 901, gave the I. C. C. authority over the abandonment of a line of railroad but not the abandonment of a train running from a point in one State to a point in another State. 104 *Cong. Rec.* 10852 (1958). The ferry cases, *Board of Public Utility Com'rs of N. J.* v. *United States*, two cases, 158 F. Supp. 98 and 158 F. Supp. 104 (D. C. N. J. 1957), probable jurisdiction noted, 357 U. S. 917 (1958), brought this situation into focus.

The ferry abandonment cases were initiated by the New York Central Railroad Company in one instance, and by the Erie Railroad Company and the Appellee, in another instance. The cases were begun before the enactment of subdivision 13a(1) in 1958. The interstate ferries (between New Jersey and New York) involved connected with intrastate and interstate trains in New Jersey. Passenger ferries were proposed to be abandoned but the freight ferries were to remain in operation. The I. C. C. in both cases allowed the abandonment, taking jurisdiction under 49 U. S. C. Section 1(18). *New York Central Railroad Co. Ferry Abandon-*

ment, 295 I. C. C. 385 (1956), 295 I. C. C. 519 (1957); *Erie Railroad Co. Ferry Abandonment*, 295 I. C. C. 549 (1957). The U. S. District Court reversed the I. C. C. decisions. *Board of Public Utility Com'rs of N. J. v. United States*, two cases, 158 F. Supp. 98 and 158 F. Supp. 104 (D. C. N. J. 1957), probable jurisdiction noted, 357 U. S. 917 (1958). The Court held that the proposed abandonment was a "partial discontinuance of a line of railroad," therefore beyond I. C. C. jurisdiction then existing under 49 U. S. C. Section 1(18). Presumably, if the railroads had sought to cease the operation of interstate trains without abandoning the line of railroad, the decision would have been the same. This was the understanding of the Congress when discussing Section 13a before its enactment. 104 *Cong. Rec.* 10852 (1958). The district court decisions were appealed to this court but before argument the matter was rendered moot by the enactment of the 1958 Transportation Act. 359 U. S. 957 (1959). Subsequently, with the enactment of Section 13a, the railroads were successful in abandoning the interstate ferries on the authority of the newly enacted subdivision 13a(1).

The I. C. C. was not given plenary authority over both an intrastate and an interstate railroad train or ferry by Section 13a of the Interstate Commerce Act. Subdivision 13a(1) grants plenary jurisdiction to the I. C. C. not over an intrastate but an interstate train or ferry only. It reads in part:

> "(1) • • • operation or service of any *train or ferry operating from a point in one State to a point in any other State* • • •" (Emphasis added).

Subdivision 13a(2) recognizes state jurisdiction over an intrastate train or ferry in the following manner:

> "(2) * * * the operation or service of any *train or ferry operated wholly within the boundaries of a single State* * * * where the State authority having jurisdiction thereof * * *" (Emphasis added).

The statute, subdivision 13a(2), goes on to say that if the State authority has denied a petition by the carrier to discontinue or has failed to act on it finally within 4 months, the carrier may apply to the I. C. C. for relief. Congress thereby implies that in the first instance the respective states have dominion over intrastate commerce as an exercise of their sovereign reserved powers recognized in the Tenth Amendment of the U. S. Constitution. To uphold the position urged by the Appellee would be to enlarge the scope of the statute beyond the purpose for which it was passed and to which purpose the plain words of the statute give testimony.

Additional historical background of this legislation may be found in the statements by counsel of the New York Central Railroad Company which was then involved in litigation to discontinue its passenger ferries after the enactment of Section 13a. Counsel states, "I want to say to the Court * * * if you go back to the testimony before the committees, you'll find that this particular case was the reason for the enactment of this section." *State of New Jersey* v. *United States*, 168 F. Supp. 324, 337 (D. C. N. J. 1958). Circuit Judge McLaughlin, dissenting in *State of New Jersey* v. *United States, supra*, said in discussing subdivision 13a(1):

> "The admitted reason for the passage of the section was our decision in Board of Public Utility Commissioners of New Jersey v. United States of America, D. C. N. J. 1957, 158 F. Supp. 98. In the

effort to obtain legislation which would enable this railroad or any railroad to summarily wipe out of existence any individual train or ferry or line of trains and ferries within the reach of the amendment the all pervading effect of the immediately preceding Section 13(1) and (2) was quite apparently overlooked; in any event its authority was in nowise restricted."

POINT II.

Assuming that the legislative intent is not clear from the words used in Section 13a, the legislative history of the law conclusively shows that subdivision 13a(1) concerns only a *train* or *ferry* running from a point in one state to a point in another state while subdivision 13a(2) deals exclusively with a *train* or *ferry* operated wholly within the boundaries of a single state.

Congressional reports and debates may be relied upon to determine the legislative intent behind a statute. *United States* v. *Congress of Industrial Organizations*, 335 U. S. 106 (1948); *Mitchell* v. *Kentucky Finance Company*, 359 U. S. 290 (1959).

Congressman Oren Harris, Chairman of the House Committee on Interstate and Foreign Commerce, explained the house version of 13a in terms of "a line of railroad" when the bill was pending in Congress in the following manner:

> "Mr. Harris • • • we leave to the State commissions complete authority over intrastate operations. *A train operating over a line of railroad located wholly within a State is within the jurisdiction of the State Commission.* The abandonment of stations

> or depots is left with the State commissions. So you can see that practically all this problem of abandonment is continued with the State commissions, as it has been in the past. The Congress has never preempted that authority." 104 *Cong. Rec.* 12530 (1958). (Emphasis added.)

Clearly, the legislation as adopted was meant to go no further than to deprive the respective States of jurisdiction over a train or ferry running from a point in one state to a point in another state, such matter constituting less than a railroad line abandonment provided for in 49 U. S. C. Section 1(18). Senator Smathers, a member of the Senate Committee on Interstate and Foreign Commerce, remarked after the issues in the bill were resolved by a Senate-House Conference Committee:

> "Mr. Smathers * * * we protected the right of the States * * * by leaving to the State regulatory agencies the right to regulate and have a final decision with respect to the discontinuance of a train service which originated and ended within one particular State, except when it could be established that intrastate service was a burden on interstate commerce.
>
> "In addition, the Senate receded on a provision under which we had given the Interstate Commerce Commission jurisdiction also to discontinue service in depots, terminals, and other such facilities in connection with the operations of railroads. We left the matter in the hands of the State regulatory agencies." 104 *Cong. Rec.* 15528 (1958).

Thus the Senator first shows that the States, under subdivision 13a(2) of the act have jurisdiction over a train which runs from one point in a state to another point within

the same state. Further the exception referred to by Senator Smathers above relates to subdivision 13a(2). Secondly, he states that the statute does not concern depots, terminals or other facilities. It is implicit in his statement to the Senate that a *train or ferry* are the only units of transport intended to be included in the bill. Can the view of the Court below, that the statute includes a bus operation, be reasonably adopted? The answer must be "No.", because the act is unambiguously restricted to a train or ferry, and no more applies to auto-buses than it does to airplanes or stage coaches.

The Court below decided that the interstate character of the passengers' journey permitted the Appellee to avoid the procedure of subdivision 13a(2) thereby bypassing a petition to state authorities. While the I. C. C. has final authority over a discontinuance under both subdivision 13a(1) and 13a(2), the procedure in the latter section provides a more effective means for the protection of state interests. For instance, the I. C. C. may authorize the discontinuance, under subdivision 13a(2), of an intrastate train or ferry "only after full hearing" and findings that (1) the public convenience and necessity permit of such discontinuance and (2) the continued operation would constitute an undue burden on interstate commerce. Conversely, under subdivision 13a(1), a carrier may discontinue an interstate train or ferry (one that runs from a point in one state to a point in another state) without a hearing if the I. C. C., in its discretion, decides not to investigate the matter.

However, though even an intrastate train may transport passengers who intend to proceed across the State line, the language of both subdivisions of Section 13a shows

that the movement of the train or ferry, from point to point, not the movement or intention of the passenger, is the determining factor. The Conference Report of the Senate-House Conference Committee makes this clear inasmuch as it refers to a train or ferry; there are no remarks as to buses or passengers. 1958 *U. S. Code Congressional and Administrative News*, p. 3482 at pp. 3486, 7. Notwithstanding the value of Congressional debates in ascertaining the intent of Congress, a conference report should be accorded greater weight because divergent views have been resolved and a unified intention presented.

POINT III.

The District Court misapplied the law to the facts in upholding Appellee's position that subdivision 13a(1) was correctly invoked for the discontinuance of passenger trains operated wholly within New Jersey.

The Court below rests its action not upon the clear language of the statute but on the ground that to apply subdivision 13a(1) to a train or ferry only would "thwart the apparent purpose of the Congress in adopting it" (R. 19). The judgment of the Court, in reversing the order of the I. C. C. (R. 7), necessarily declares by implication that intrastate trains are not within a state's jurisdiction. Congress, in enacting Section 13a, never intended to say this. Instead, Congress desired to protect state authority over "A train operating over a line of railroad located wholly within a State * * *" (R. 99).

The District Court was in error when it found a Congressional intent for which there is no basis in the clear

language of the statute. On the other hand, the I. C. C. recognized that even though terminals had been discussed when Section 13a was being debated in Congress (104 *Cong. Rec.* 12533 (1958)), subdivision 13a(1), as enacted, limited the I. C. C. jurisdiction to a "train or ferry operating from a point in one State to a point in any other State • • •." This view by the I. C. C. is expressed in its order of January 18, 1961 (R. 7) and in subsequent proceedings in this matter. It is a familiar rule that a construction made by an administrative body charged with the enforcement of a statute, although not controlling, may be resorted to as an aid in ascertaining the legislative intent and is entitled to persuasive weight. *Boston & M. R. Co.* v. *Hooker*, 233 U. S. 97 (1914); *New York Central Securities Corporation* v. *United States*, 287 U. S. 12 (1932). This doctrine of contemporaneous construction of a statute applies to Section 13a because the I. C. C. has acted pursuant to its authority under that law. Further, this Court has said that, under certain circumstances, the I. C. C. construction of a statute may "be treated as read into the statute." *New York, N. H. & H. R. Co.* v. *Interstate Commerce Commission*, 200 U. S. 361 (1906).

The instant matter is governed by subdivision 13a(1), not by 49 U. S. C. Section 302(c)(1) and (2). The latter statute concerns terminal areas. There is no necessary correlation between commerce which crosses State lines, and commerce within a terminal area; such areas do not always straddle state boundaries. Therefore, the I. C. C. determinations in *New York, Susquehanna and Western Railroad Company, etc. Application*, 34 M. C. C. 581 (1942) and 46 M. C. C. 713 (1946), to the effect that the bus service

between Susquehanna Transfer and New York City is an intra-terminal operation cannot be construed to mean that such service comes within subdivision 13a(1) which covers a "train or ferry operating from a point in one State to a point in any other State * * *." The I. C. C. made no mention of terminal areas in its order of January 18, 1961, although it was most familiar with the subject matter, having passed on the issue before. The District Court improperly extended the reach of subdivision 13a(1), by the use of other statutes which are not related to the discontinuance of a train.

The Court below held that the term "operation" in subdivision 13a(1) could not be equated with the word "movement" this to rebut the position taken by the Appellants, namely, that the I. C. C. jurisdiction in subdivision 13a(1) is limited to a train or ferry which runs from a point in one State to a point in another State. The context of the statute explains to some extent the use of the term "operation." Subdivision 13a(1) relates to operation of a train or ferry "from a point in one State to a point in any other State," that is, to operation in interstate commerce whereas subdivision 13a(2) applies to operation of a train or ferry "operated wholly within the boundaries of a single State," namely, conventional *intrastate* commerce, as to which vastly greater protection is accorded in deference to the long standing reserved powers of the States in that domain. *Palmer* v. *Massachusetts*, 308 U. S. 79 (1939).

So much for the concept of "operation"; the meanings of "train" and "railroad" are equally clear. In the statute itself Congress rejected the idea that a ferry is a train, when to "train" it added the phrase, "or ferry," which is

utter surplusage if "any train" means as the Appellee would have it, "any train and any other mode of transportation connecting therewith."

This Court indicated in *Transit Commission* v. *United States*, 289 U. S. 121, 128 (1933), that "operation" of a "line of railroad" signified a train running on tracks. In that case, the Long Island Railroad Company had agreed to the joint use of the railroad tracks of the Pennsylvania Tunnel and Terminal Railroad Company. This agreement, the Court said, was within the I. C. C. jurisdiction. Moreover, in *United States* v. *Erie R. Co.*, 237 U. S. 402, 407 (1915), this Court stated that a train consists of "an engine and cars which have been assembled and coupled together for a run or trip along the road." The I. C. C., in *Arlington & F. A. R. Co.*, 228 I. C. C. 479 (1938), stated that auto-rail cars, operating within one state as rail cars but converting to auto cars and then crossing the state line into another state, were not an extension of a line of railroad. Two decisions of this Court were cited as supporting the view of the I. C. C.: *Texas & P. Ry. Co.* v. *Gulf, C. & S. F. Ry. Co.*, 270 U. S. 266 (1926) and *Railroad Commission of California* v. *Southern Pac. Co.*, 264 U. S. 331 (1924).

The following statement by Congressman Oren Harris makes it clear that the phrase "operation or service" excludes stations, depots, or other facilities. The Congressman remarked:

> "Mr. Harris • • • Section 4 of the bill adds a new section 13a to the act, whereby the railroads, at their option, may have the Interstate Commerce Commission, rather than the State Commissions, pass upon the discontinuance or change in the operation or

service of any train or ferry. *This option is limited, however, to the operation or service of a train or ferry on a line of railroad not located wholly within a single State.* This limitation is contained in the bill being reported because the Committee feels that the record at this time does not support the broader change in venue, requested by the railroads, which would have covered Interstate Commerce Commission jurisdiction also over operations more local in character, such as those of a branch line or other line of railroad located solely within one State.

"The bill as introduced also covered the Interstate Commerce Commission passing upon discontinuance or change of the operation or service of stations, depots, or other facilities. This jurisdiction has not been included in the bill as reported, as the committee believes the record presented in its hearings does not support the need for transferring such jurisdiction from State regulatory bodies." 104 *Cong. Rec.* 12533 (1958). (Emphasis added.)

The phrase in Section 13a, "operation or service," thus does not include stations, depots or other facilities. The operation or service is inseparable from the train or ferry run. If Congress had intended to broaden the train or ferry concept, it could have used the terms "railroad" and "transportation" which then existed in 49 U. S. C. Section 1(3)(a). The scope of the words there defined would include stations, depots or other facilities. Explaining the jurisdiction of the I. C. C. and clarifying the term "service," Senator Smathers and Senator Kuchel remarked:

"Mr. Smathers. * * * We give authority to the Interstate Commerce Commission only over inter-

state commerce trains. We more clearly define that the public utilities commission has authority over completely intrastate trains and facilities.

"Mr. Kuchel. Yet, up to 1958, Congress has not seen fit to preempt the field, but, to the contrary, until 1958 Congress has recognized that each State, through its utilities commission, should sit in judgment on what *services* should be performed." 104 *Cong. Rec.* 10852 (1958). (Emphasis added.) Other related discussions at 104 *Cong. Rec.* 12530 (1958).

The "services" spoken of were those of a train performed while running from one State to another State over which each respective state by its appropriate regulatory agency had jurisdiction. Throughout their deliberations, the legislators never mention a bus nor is there evidence in the Congressional Record that the rail carriers urged the inclusion of a bus within the reach of Section 13a. Also, Sections 302(c)(1) and (2) concerning motor carriers are never mentioned by the legislators.

The principle urged by the Court below cannot be reconciled with the intent of Congress in enacting subdivision 13a(2). There would be no need for subdivision 13a(2) if 13a(1) had been intended to encompass both an interstate and an intrastate train or ferry; that is, (1) an interstate train or ferry, and (2) an intrastate train or ferry connecting with an interstate bus (or other interstate "operation" of a train or ferry). The scope of the term "operation" could easily be expanded by extending the Court's rule to intrastate trains or ferries connecting with every conceivable mode of interstate connecting transport, public or private, other than a bus. It would be almost impossible

to determine what train or ferry is included by the terms of subdivision 13a(2), for the passenger's subsequent journey, after ending the intrastate part, would have to be followed to determine if the trip were intrastate or interstate. Did Congress intend to provide such an uncertain guide for the federal and state agencies administering Section 13a? The answer must be no.

Summarizing, the rule of the Court below is that the train or ferry is not the crucial factor in determining whether a state or federal agency has jurisdiction. The test of the Court below is to look at the passenger, the ticket, and the terminal in order to find whether it is an interstate or intrastate train. This is not the correct interpretation of the law. It must be presumed that Congress did not act without reason in enacting subdivision 13a(2). By giving subdivision 13a(2) its intended meaning and finding the Congressional intent in the clear words of the statute, it must be concluded that the majority of the Court below incorrectly interpreted the law.

Conclusion.

The Appellants, State of New Jersey and its Board of Public Utility Commissioners, on the basis of the foregoing, maintain that the Court below erred when it ruled that the Appellee acted properly by seeking an intrastate train discontinuance before the I. C. C. on authority of subdivision 13a(1). Further, Appellants respectfully submit that the remedy provided by Congress for Appellee's situation is contained in subdivision 13a(2). For the reasons stated it is respectfully submitted that the judgment of the Court below should be reversed.

Respectfully submitted,

ARTHUR J. SILLS,
Attorney General of New Jersey,
Attorney for Appellants,
State of New Jersey and
Board of Public Utility Commissioners,
State House Annex,
Trenton 25, New Jersey.

Of Counsel,
WILLIAM GURAL,
Deputy Attorney General,
101 Commerce Street,
Newark 2, New Jersey.

Dated: October 15, 1962.